

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Miyano Machinery USA Inc.,)	
)	
Plaintiff,)	
)	Civil Action No. 08 C 526
v.)	
)	Hon. Virginia Kendall
MiyanoHitec Machinery, Inc.,)	
Thomas ("Tom") Miyano, a/k/a)	Magistrate Judge Nolan
Toshiharu Miyano and Steven)	
Miyano, a/k/a Shigemori Miyano,)	
)	
Defendants)	JURY TRIAL DEMANDED
)	
)	
MiyanoHitec Machinery, Inc.,)	
Thomas ("Tom") Miyano, a/k/a)	
Toshiharu Miyano and Steven)	
Miyano, a/k/a Shigemori Miyano,)	
)	
Counterclaim-Plaintiffs)	
)	
v.)	
)	
Miyano Machinery USA Inc. and)	
)	
Counterclaim-Defendants)	
)	
Miyano Machinery Inc.,)	
)	
Third-Party Defendants)	

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR AN ORDER
REQUIRING PLAINTIFF TO DISCLOSE ALL LIVE WITNESSES TO BE
CALLED AT HEARING ON PRELIMINARY INJUNCTION MOTION
AND TO ENLARGE TIME TO RESPOND**

1. Defendants latest Motion, which requests an order requiring *only* Plaintiff to disclose the live witnesses that it will call at the June 13 hearing on the Motion for a Preliminary Injunction and to enlarge Defendants' time to

respond, presents a one sided view of a dilemma that Defendants created themselves. Defendants' Motion should be denied.

2. Plaintiff provided Defendants with substantial discovery since the Complaint and Motion for Preliminary Injunction were filed on January 28 and February 8, 2008, respectively. Since that time, Plaintiff has produced more than 22,000 documents organized by request number and a voluminous 174 page response to Defendants' First Set of Interrogatories which, including subparts, clearly exceeds the limit of 25 interrogatories specified in Rule 33. Defendants have also taken 7 depositions, including a Rule 30(b)(6) deposition of Plaintiff.

3. This Court has indicated that live witnesses would be permitted at the hearing on Plaintiff's Motion for Preliminary Injunction. *See Exhibit 1 Transcript of March 26, 2008 Conference Call before Judge Virginia Kendall, pg. 18, line 23 through pg. 19, line 5.*

4. In response to Defendants' May 6 request to Plaintiff that it identify any live witnesses that it intends to call at the June 13 preliminary injunction hearing, Plaintiff advised Defendant that it did not intend to call any witnesses other than those that either had been deposed or were still scheduled to be deposed, however, it had not made a final decision. Accordingly, Plaintiff requested that the parties agree to the reciprocal disclosure of witness lists on a date to be mutually agreed upon.

5. Plaintiff made this request to Defendants in at least four written communications, all to no avail. *See LAlex emails to Geoff Baker of May 8, 7:22 pm; May 9, 3:32 pm; and May 13, 12:49am (Exhibit to Defendants Motion); see also LAlex email to Geoff Baker of May 8, 3:46 pm attached hereto as Exhibit 2.*

6. Defendants are simply unwilling to agree to an even playing field, and therefore they decline to accept Plaintiff's offer. While Defendants are making this demand of Plaintiff, they remain silent in their Motion on whether they will call live witnesses to testify at the hearing and/or which declarations they will rely on. And now Defendants have unilaterally refused to timely file

their Response to the Motion for Preliminary Injunction, which, after one prior extension, was due on May 23, 2008.

7. Ironically, Defendants' May 6 request for an identification of Plaintiff's witnesses comes less than 48 hours after Defendants were forced to produce the written declarations of three non-party witnesses residing in Japan which they had executed in early March 2008 and then withheld for nearly 6 weeks prior to and throughout the parties' mid-April 2008 trip to Osaka, Japan where Defendants deposed officials of Plaintiff's parent company, including the chief executive officer. On Monday, April 21 – the first business day after counsel for the parties returned from Japan – Defendants' counsel advised Plaintiff's counsel of the existence of these three non-party declarations and that he would not produce them until May 23rd, the date on which Defendants were ordered to respond to Plaintiff's Motion for Preliminary Injunction (a deadline which Defendants have elected to disregard). Had this failure to disclose the declarations been permitted by Magistrate Judge Nolan, Plaintiff would have been forced to decide in a vacuum whether such depositions were necessary, and if so, to conduct depositions back in Osaka, Japan before filing its Reply brief on June 6.

8. Despite the fact these non-party declarations were executed well before the parties exchanged their Initial Disclosures on March 21, Defendants omitted the address, telephone number, and subjects of information for these witnesses in Defendants' Initial Disclosures in order to prevent Plaintiff from contacting them or otherwise learning of the relevance, if any, of their testimony.

9. In view of Defendants' gamesmanship, on April 28 Plaintiff filed to a motion to compel the immediate production of these executed, non-party declarations. Plaintiff withdrew its Motion to Compel after Defendants agreed to produce these declarations, which they did reluctantly on May 4th only after Judge Nolan's intervention.

10. Faced with the prospect of having to engage Plaintiff on an even playing field, Defendants are seeking to replicate the imbalance they have been

denied by requiring only Plaintiff to disclose the live witnesses which it intends to present at the hearing on June 13. Defendants are asking Plaintiff to commit to disclosing its hearing witnesses without the benefit of seeing Defendants' Response to the Motion for Preliminary Injunction or agreeing to a similar disclosure of witnesses or declarants by Defendants.

11. Defendants' delay tactics are just that, and the hearing on the Motion for Preliminary Injunction should not be again rescheduled.

12. For the reasons set forth above, Defendants' Motion is without merit and should be denied.

Dated: May 23, 2008

Respectfully Submitted,

/s/ Edward D. Manzo

Edward D. Manzo (ID #03124728)

Joel Bock (ID #00239984)

Louis J. Alex (ID #06274458)

Jason R. Smalley (ID 6287426)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned declares that he/she is over the age of 18 years, not a party to this action, and employed in the County of Cook, by Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd., Attorneys at Law, 200 West Adams Street, Suite 2850, Chicago, Illinois 60606.

On the date listed below, I caused the filing of the foregoing **PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR AN ORDER REQUIRING PLAINTIFF TO DISCLOSE ALL LIVE WITNESSES TO BE CALLED AT HEARING ON PRELIMINARY INJUNCTION MOTION AND TO ENLARGE TIME TO RESPOND** with all its attachments and exhibits. I caused the service of these aforementioned documents on the following individuals, as addressed below, by the means indicated, and on the date listed below:

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X (BY ELECTRONIC MEANS) I caused this document to be electronically mailed (emailed) to Vernon W. Francissen, at the address shown above.

X (BY ELECTRONIC MEANS) I cause each such document to be sent by electronic means through the Electronic Court Filing system to Nancy Sasamoto, Steven Katz, George H Kobayashi, Geoffrey A. Baker, Geoffrey D. Smith and Robert M. Karton at the address shown above, pursuant to LR 5.9.

Executed on May 23, 2008 at Chicago, Illinois.

Signed: */s Edward Manzo*

EXHIBIT 1

04:55:19

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIYANO MACHINERY USA INC.,	Case No. 1:08-cv-00526
Plaintiff,	Chicago, Illinois
	March 26, 2008
v.	Conference Call
MIYANOHITEC MACHINERY, INC.,	
et al.,	
Defendants.	

TRANSCRIPT OF CONFERENCE CALL
BEFORE THE HONORABLE VIRGINIA M. KENDALL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	Cook Alex McFarron Manzo Cummings Mehler, Ltd.
	By: Edward D. Manzo, Jason R. Smalley, Joel H. Bock, and Louis J. Alex
	200 W. Adams St., Ste. 2850 Chicago, IL 60606 (312) 236-8500 Via telephone.

APPEARANCES (Cont'd.):

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By: Robert M. Karton
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Via telephone.

- and -

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For the Defendants: Masuda, Funai, Eifert & Mitchell, Ltd.
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Proceedings recorded by mechanical stenography; transcript
produced by notereading.

05:03:18 1 (Commenced at 5:03 p.m.)

05:03:18 2 THE CLERK: We're calling civil case 08-526, Mi yano

05:03:23 3 Machi nery versus Mi yanoHi tec.

05:03:25 4 Counsel , wi ll you please state your appearances for

05:03:29 5 the record.

05:03:29 6 MR. FRANCI SSEN: Thi s i s Vern Franci ssen appearing

05:03:32 7 for the Mi yanos.

05:03:33 8 MR. KARTON: Robert Karton, K-a-r-t-o-n, appearing

05:03:36 9 for Mi yanoHi tec and the Mi yanos.

05:03:39 10 MR. MANZO: Edward Manzo for pl ainti ff, M-a-n-z, l i ke

05:03:44 11 Zorro, -o.

05:03:47 12 MR. KATZ: Steven Katz for counterdefendant Mi yano

05:03:50 13 Machi nery, I nc.

05:03:54 14 MR. MANZO: Al so wi th me -- thi s i s Manzo speaking --

05:04:00 15 i s Loui s Al ex, A-l -e-x, Joel Bock, B-o-c-k, and Jason Smal ley,

05:04:06 16 S-m-a-l -l -e-y.

05:04:09 17 THE COURT: Okay. Good afternoon, gentl emen.

05:04:10 18 Have we found out where our travel ing newl ywed i s

05:04:14 19 goi ng?

05:04:16 20 MR. MANZO: Yes, your Honor. Thi s i s Edward Manzo.

05:04:19 21 And the answer to that i s the Phi l i ppi nes. I don' t know i f

05:04:24 22 your Honor had occasi on to see document 53 that we filed thi s

05:04:27 23 afternoon.

05:04:28 24 THE COURT: I' ve been ti ed up al l day wi th Court. I

05:04:31 25 haven' t read any documents.

05: 04: 33 1 MR. MANZO: Okay. Well, we sent over a
05: 04: 34 2 two-and-a-half-page document, and it explains that our
05: 04: 39 3 newlywed is leaving Japan on the 31st. He's going to the
05: 04: 46 4 Philippines for approximately three months. The first part of
05: 04: 50 5 that is a honeymoon, and the second part of that is language
05: 04: 54 6 study, and he has no plans to travel anywhere else, the United
05: 04: 59 7 States, Europe, or elsewhere.

05: 05: 02 8 THE COURT: So will he be available for deposition in
05: 05: 06 9 the Philippines?

05: 05: 08 10 MR. MANZO: I do not know that. I do not know if
05: 05: 15 11 he's available for deposition. I don't have any information
05: 05: 18 12 on that, Judge.

05: 05: 20 13 THE COURT: Well, the problem that I'm having with
05: 05: 23 14 this, is that, I find it to be gamesmanship to have control of
05: 05: 29 15 him up to this magic bewitching hour, when suddenly he is
05: 05: 33 16 outside of the control. And even though I have ruled that his
05: 05: 35 17 testimony is relevant and should be given to the defense for
05: 05: 40 18 the preliminary injunction hearing, he's no longer available
05: 05: 46 19 and you can wash your hands of it and say, Well, he retired so
05: 05: 50 20 it's not my issue any longer, especially in light of your
05: 05: 53 21 representation that he would be available to the defense for a
05: 05: 56 22 deposition up until a particular date in April.

05: 05: 59 23 So what's your response to that?

05: 06: 01 24 MR. MANZO: Your Honor, I did file a written response
05: 06: 04 25 to that. And my response is that we told defendants back on

05:06:11 1 March 14 that if they wanted the deposition of this gentleman,
05:06:15 2 it has to be in March, before the end of March.

05:06:17 3 They -- instead of proceeding, they waited. In fact,
05:06:19 4 they even asked for an extension. They asked for more time
05:06:22 5 with regard to the other people.

05:06:24 6 It's not like we hid him. We said to them in
05:06:28 7 writing, and it's an exhibit attached to what I filed this
05:06:31 8 afternoon, your Honor. We told them he becomes unavailable at
05:06:37 9 the end of March, and it's not until Sunday night that they
05:06:40 10 moved to compel.

05:06:44 11 THE COURT: Response?

05:06:46 12 MR. KARTON: Your Honor, the first time that we heard
05:06:48 13 that he was going to be out of Japan was yesterday in our
05:06:55 14 conference call. Prior to that time, we were told that,
05:07:00 15 first, he would be available 'til the end of March. Then
05:07:03 16 March 26th when he was retiring -- or retiring from MMJ. Then
05:07:09 17 he was taking another job in Japan.

05:07:16 18 And then yesterday, for the very first time, he was
05:07:19 19 getting married and he was leaving Japan for this three-month
05:07:24 20 honeymoon, now part of which is a honeymoon, part of which is
05:07:27 21 a language study.

05:07:29 22 The whole purpose for taking depositions in Japan at
05:07:36 23 all, rather than here, was to include Mr. Nakagiri. That's
05:07:42 24 why this all was done, and it's only now, as you've observed,
05:07:49 25 that he is beyond everybody's jurisdiction and control.

05:07:54 1 THE COURT: Well, on Friday, March 14th, when the
05:07:56 2 letter was given to you regarding the fact that he would be
05:08:00 3 retiring from MMJ at the end of March 2008, did you attempt to
05:08:05 4 schedule his deposition?

05:08:07 5 MR. KARTON: I'm sorry?

05:08:08 6 THE COURT: On March 14th, when the plaintiff offered
05:08:14 7 you the information that he would be retiring from MMJ at the
05:08:17 8 end of March of 2008, did you attempt to schedule his
05:08:21 9 deposition?

05:08:22 10 MR. KARTON: We -- at that time we were attempting to
05:08:25 11 schedule all the depositions, because, if you'll notice in
05:08:28 12 that same letter, we were told at that time that if we wanted
05:08:33 13 to take the deposition of Mr. Nakagiri in Japan, we would
05:08:38 14 have to take the depositions of everybody in Japan on
05:08:42 15 successive days. And then there was an issue of availability
05:08:45 16 in Japan of everybody on successive days.

05:08:50 17 So if we didn't want to take Nakagiri's deposition
05:08:54 18 in Japan, then we could take the depositions of the other
05:08:58 19 three in the United States after April -- or after April 1st.
05:09:03 20 But we still had a problem with scheduling all four
05:09:06 21 depositions because, although counsel said that he would try
05:09:10 22 to work with us, at that point in time he couldn't represent
05:09:15 23 that MMJ would comply because he said numerous times that he
05:09:20 24 didn't represent MMJ.

05:09:22 25 So we were left with a statement, We'll do what we

05:09:28 1 can, but we can't commit to anything. We don't control
05:09:30 2 anything. And Nakagiri will be in Japan, but he's going to
05:09:35 3 retire from MMJ, but you can only do it if you can get the
05:09:39 4 other three involved at the same time. And this was a
05:09:41 5 scheduling nightmare that we've tried to put together
05:09:46 6 unsuccessfully, throughout this entire time. We were always
05:09:52 7 anxious to take Nakagiri's deposition.

05:09:55 8 THE COURT: Well, it looks like you have four more
05:09:57 9 days to do it before he leaves Japan.

05:10:01 10 MR. KARTON: Well, that's certainly impossible, isn't
05:10:04 11 it?

05:10:04 12 THE COURT: Impossible did you say?

05:10:06 13 MR. KARTON: I believe that it is impossible.

05:10:09 14 THE COURT: And why is that?

05:10:10 15 MR. KARTON: Well, because we can't set up the
05:10:13 16 consulate in the next three, four days. It's already -- well,
05:10:17 17 it's not Saturday in Japan yet.

05:10:19 18 THE COURT: Why does it have to go through the
05:10:21 19 consulate? Why are we going through the consulate if he's
05:10:25 20 represented by Mr. Manzo and Mr. Manzo's making him available?
05:10:30 21 Why is that?

05:10:30 22 MR. KARTON: It's my understanding it's illegal to
05:10:32 23 take a deposition in Japan of a Japanese National in Japan
05:10:37 24 except on -- in an American case, except in an American -- on
05:10:42 25 American territory. That's the embassy consulate.

05: 10: 45 1 MR. MANZO: Judge, this is Edward Manzo speaking.
05: 10: 49 2 Before we go to take depositions -- and by the way, we did
05: 10: 52 3 agree to the order with opposing counsel. The lawyers have to
05: 10: 57 4 get visas from Japan to take depositions. It has to be done
05: 11: 02 5 in the consulate. It's illegal to take -- as I understand it,
05: 11: 05 6 it's illegal to take a deposition of a Japanese witness
05: 11: 09 7 otherwise in an American lawsuit.

05: 11: 13 8 And, you know, we told them this back and March 14,
05: 11: 20 9 If you want him, you're going to have to get him before the
05: 11: 23 10 end of March, and they didn't do it. I don't think I should
05: 11: 29 11 be tagged with any adverse consequences if they didn't --
05: 11: 34 12 didn't go after the witness knowing that he was leaving.

05: 11: 38 13 THE COURT: What are the -- what's the situation with
05: 11: 41 14 the Philippines and interviewing him in the Philippines?

05: 11: 48 15 MR. KARTON: Are you asking --

05: 11: 49 16 THE COURT: Anybody who happens to know what the
05: 11: 51 17 situation is regarding interviewing a witness in the
05: 11: 53 18 Philippines, are we going to have the same problem?

05: 11: 57 19 MR. KARTON: I don't know the answer to that, Judge.
05: 11: 59 20 This is the first time that I heard that he was going to be in
05: 12: 01 21 the -- this is Karton -- this is the first time that I heard
05: 12: 04 22 he was going to be in the Philippines.

05: 12: 08 23 But my bigger problem -- and we would go there, if we
05: 12: 10 24 have to, to take his deposition. But this -- according to
05: 12: 15 25 what I understand, the counsel for MMJ can't even guarantee

05: 12: 21 1 that he would appear in the Philippines.

05: 12: 26 2 THE COURT: Can he answer written interrogatories?

05: 12: 30 3 MR. KARTON: Well, that's not --

05: 12: 33 4 THE COURT: Of course, it's not the same.

05: 12: 38 5 MR. KARTON: Of course, he could, your Honor, but
05: 12: 40 6 that's unsatisfactory to us.

05: 12: 41 7 MR. MANZO: Your Honor, this is Edward Manzo. We
05: 12: 43 8 even offered to try to work out a stipulation as to what his
05: 12: 46 9 testimony might say. We're not opposed to anything. We
05: 12: 51 10 offered -- we said, I think, yesterday -- we said we're
05: 12: 55 11 willing to extend an offer to the man to -- maybe we can get
05: 12: 59 12 him to come to Hawaii, you know, on his honeymoon.

05: 13: 02 13 I suppose that a man on his honeymoon -- and
05: 13: 05 14 apparently he's not an older man, he's a younger man -- maybe
05: 13: 09 15 he wants to go to Hawaii, maybe not. But he's going to the
05: 13: 12 16 Philippines resolutely for a three-month sojourn, most of
05: 13: 17 17 which or part of which is his honeymoon and the rest is
05: 13: 20 18 language studies, in preparation for whatever it is the man
05: 13: 22 19 has in mind to do next.

05: 13: 25 20 I personally do not the Hague Convention for
05: 13: 30 21 discovery as it relates to the Philippines. I do not believe
05: 13: 34 22 it extends to Japan, except for the service of papers. I do
05: 13: 39 23 not -- I do not think it extends to taking discovery. We
05: 13: 46 24 are -- I just don't know the situation with the Philippines.

05: 13: 49 25 MR. KARTON: This is Karton again, your Honor. We

05: 13: 51 1 are still left with the problem that we are told now by
05: 13: 57 2 counsel -- and the only one who's filed an appearance for MMJ
05: 14: 01 3 is Steven Katz here -- we are told that they would invite him
05: 14: 10 4 to come, but he would appear wherever it is at his pleasure.
05: 14: 17 5 That's just not good enough. We can't do that.

05: 14: 20 6 THE COURT: Well, what do you expect me to do? I'm a
05: 14: 24 7 federal judge, not the Lord. I can't move continents closer
05: 14: 29 8 together within the next four days for your convenience, nor
05: 14: 32 9 can I have the jurisdiction over the Japanese government to
05: 14: 35 10 tell them how to change their procedures, nor can I tell the
05: 14: 39 11 man he may not retire on March 31st.

05: 14: 42 12 So what is your proposal, Counsel?

05: 14: 46 13 MR. KARTON: Well, that's -- I'm inclined to think,
05: 14: 50 14 your Honor, that since we believe that we have been prevented
05: 14: 56 15 from taking his deposition, which we believe and you have
05: 15: 01 16 ruled is relevant, and there's no remedy for that to get his
05: 15: 09 17 testimony, we would like you to strike any references -- well,
05: 15: 15 18 I don't know about that. I can't answer the question because
05: 15: 18 19 I don't know the answer and I don't want to guess.

05: 15: 24 20 I suppose impose sanctions on the plaintiff for
05: 15: 31 21 putting us in this position.

05: 15: 34 22 THE COURT: For putting you in the position that they
05: 15: 36 23 informed you that he was going to retire at the end of March
05: 15: 40 24 and that his deposition would need to be taken in Japan before
05: 15: 43 25 March 31st?

05: 15: 45 1 MR. KARTON: Your Honor, up -- no. For putting us in
05: 15: 47 2 the position of saying to us, We will try to do what we can to
05: 15: 52 3 work with you, but we can't guarantee any results. We can't
05: 15: 57 4 guarantee cooperation. We can't guarantee that he will be
05: 15: 59 5 present on any given date no matter what you set up. All we
05: 16: 04 6 can do is make an attempt to see if we can get them to do that
05: 16: 07 7 after reiterating several times we don't represent them and we
05: 16: 12 8 don't expect to represent them. And as of this moment Cook
05: 16: 16 9 Alex still doesn't represent MMJ.

05: 16: 19 10 MR. MANZO: If I may respond to that, Judge? This is
05: 16: 21 11 Edward Manzo. If you'd like my response.

05: 16: 24 12 THE COURT: That's fine.

05: 16: 25 13 MR. MANZO: They did not serve MMJ with a
05: 16: 30 14 counterclaim or a third-party complaint -- later on -- and I
05: 16: 36 15 think it was not until the -- Friday the 9th -- the 14th, that
05: 16: 40 16 day, and we had no expectation that we were going to represent
05: 16: 45 17 the parent company. It was not until last Thursday, March 20,
05: 16: 54 18 that I actually was able to communicate directly with them,
05: 16: 59 19 and they did ask us to go ahead and enter appearances, and we
05: 17: 02 20 intend to enter appearances tonight or tomorrow.

05: 17: 06 21 Mr. Katz and his firm have already entered their
05: 17: 09 22 appearances. I expect to be lead counsel for the parent
05: 17: 14 23 company.

05: 17: 17 24 But at the time -- you know, up to March 14, we had
05: 17: 21 25 no expectation that -- we certainly had no control over our

05: 17: 24 1 parent company, and I did not represent them. And that's the
05: 17: 29 2 situation, Judge.

05: 17: 30 3 I'm very sorry if the defendants feel that I
05: 17: 35 4 hornswoggled them, but we've tried to tell them straight all
05: 17: 39 5 along that this gentleman is retiring and becomes
05: 17: 42 6 unavailable -- he's out of our control. If you need him, you
05: 17: 47 7 need to take him in Japan before the end of March. And --

05: 17: 50 8 THE COURT: Well, not all along. That information
05: 17: 52 9 didn't come in until last Friday.

05: 17: 54 10 MR. MANZO: On March 14.

05: 17: 56 11 THE COURT: Right.

05: 17: 57 12 MR. MANZO: The letter says that, your Honor. I'm
05: 17: 59 13 sorry.

05: 17: 59 14 It's attached as an exhibit to what I filed today in
05: 18: 03 15 document 53.

05: 18: 03 16 THE COURT: I've referred to it twice already in this
05: 18: 06 17 phone call.

05: 18: 06 18 MR. MANZO: Yes, your Honor. My apologies, Judge.

05: 18: 10 19 THE COURT: Mr. Katz, do you have anything to add to
05: 18: 12 20 this? Are you coming onboard for MMJ?

05: 18: 18 21 MR. KATZ: I am. We have filed an appearance.
05: 18: 20 22 There's not much more I can add. We will do everything we can
05: 18: 23 23 to try to contact this witness and make him available or to
05: 18: 32 24 try to get discovery from him in any other format that we
05: 18: 37 25 can -- we can agree with the other parties.

05: 18: 40 1 But he -- he -- he is out of our control. And it
05: 18: 44 2 isn't a matter of gamesmanship; it's just a matter of reality.
05: 18: 48 3 We're doing everything we can and will continue to do
05: 18: 51 4 everything we can to give the opposing parties as much access
05: 18: 58 5 to discovery as we can.

05: 19: 01 6 MR. KARTON: Your Honor, this is Karton again, if I
05: 19: 03 7 may. On the 14th when we served MMJ here in Chicago -- or in
05: 19: 11 8 Illinois and Mr. Manzo says that he was unaware that that
05: 19: 20 9 happened when he wrote the letter, he was informed by e-mail
05: 19: 23 10 that we had served them on that day. He was informed that
05: 19: 29 11 evening that we had served MMJ.

05: 19: 32 12 At that point in time and up until Mr. Katz filed his
05: 19: 38 13 appearance late last evening, we had no one with him -- with
05: 19: 44 14 whom to deal to ensure Mr. Nakagiri's presence anywhere. We
05: 19: 53 15 can't serve him with a subpoena in Japan. Even though we had
05: 20: 00 16 jurisdiction over him in your case, in the case before you, we
05: 20: 06 17 couldn't serve him in Japan with a subpoena. And we had been
05: 20: 11 18 told consistently that the best that could be done by Cook
05: 20: 16 19 Alex was ask them and that they would try to work things out,
05: 20: 22 20 and that maybe it would work and maybe it wouldn't work. But
05: 20: 26 21 they weren't going to represent him, MMJ, and it's only
05: 20: 31 22 yesterday that MMJ has counsel here.

05: 20: 34 23 THE COURT: Well --

05: 20: 35 24 MR. KARTON: How in the world were we supposed to --
05: 20: 37 25 I'm sorry. I don't mean to ask that that way.

05: 20: 40 1 THE COURT: The only -- all of these issues are
05: 20: 42 2 arising because of all of your heated demands -- not you,
05: 20: 48 3 yourself, but the parties' heated demands to move at this pace
05: 20: 52 4 of lightning to get your quick preliminary injunction motion
05: 20: 59 5 underway and resolved, in light of the challenging location of
05: 21: 05 6 witnesses and evidence.

05: 21: 09 7 And the letter describing the fact that he was going
05: 21: 13 8 to be leaving the company at the end of March was sent
05: 21: 17 9 literally, you know, six weeks after the filing of the case.
05: 21: 22 10 So in six weeks after appearing before me and just laying the
05: 21: 26 11 land on this preliminary injunction, we are already coming to
05: 21: 31 12 the realization that he is not going to be available for a
05: 21: 34 13 deposition within the short time frame that you all want him
05: 21: 38 14 to be available --

05: 21: 39 15 MR. KARTON: We attempted to -- this is Karton again.
05: 21: 42 16 We attempted to subpoena him.

05: 21: 45 17 THE COURT: How?

05: 21: 45 18 MR. KARTON: Through -- well -- through MMJ, through
05: 21: 50 19 Cook Alex, and they said MMJ isn't in the case and we don't
05: 21: 55 20 represent them.

05: 21: 56 21 THE COURT: Well, that was accurate at the time,
05: 21: 58 22 right?

05: 21: 59 23 MR. KARTON: It was indeed accurate at the time. And
05: 22: 03 24 when you say a quick hearing on this -- on this motion for a
05: 22: 08 25 preliminary hearing, we're not -- we, the Miyanos, aren't

05: 22: 13 1 pushing to have a quick hearing on that.

05: 22: 16 2 We recognize that all this time has gone by and we
05: 22: 21 3 don't see any great urgency for that or for a hearing at all
05: 22: 28 4 on a motion for a preliminary injunction. But we're dealing
05: 22: 31 5 with a date that your Honor set or we're trying to, and we're
05: 22: 35 6 trying to get our discovery done as quickly as we can.

05: 22: 39 7 THE COURT: Well, I will repeat that I cannot,
05: 22: 43 8 without a valid proposal from anyone as to how to make this
05: 22: 47 9 deposition happen, I cannot make it happen the way that you
05: 22: 52 10 would like, as much as you're upset about not having him be
05: 22: 56 11 deposed.

05: 22: 57 12 So I can't do anything unless you give me a proposal
05: 23: 01 13 as to what to do. The only proposal I've heard is to sanction
05: 23: 04 14 the plaintiffs for not making him available for you during the
05: 23: 08 15 time frame that you want him made available for you.

05: 23: 12 16 With that in mind then you certainly can file that
05: 23: 16 17 motion and get ready with the other depositions that you have,
05: 23: 19 18 and I'll deal with that motion in response. And is this
05: 23: 23 19 agreed order one for the rest of the depositions? Is
05: 23: 27 20 everybody onboard with it?

05: 23: 29 21 MR. KARTON: That's for three other people in Osaka
05: 23: 32 22 and we are in agreement with that, and we would like your
05: 23: 39 23 Honor to enter that so that we can move ahead and not be
05: 23: 45 24 hamstrung.

05: 23: 45 25 THE COURT: Okay. Well --

05: 23: 46 1 MR. KARTON: If it turns out that we have a -- we, by
05: 23: 49 2 agreement, come up with an alternative that we've been
05: 23: 52 3 discussing, it might make that order moot, but we'd rather
05: 23: 55 4 have the order in hand so we can proceed.

05: 23: 59 5 THE COURT: Okay. I'll sign the order so you can
05: 24: 02 6 move forward with that. And I also have been handed a
05: 24: 07 7 plaintiff's response to defendant's motion to compel the
05: 24: 10 8 deposition and enlarge the briefing schedule.

05: 24: 13 9 And are you agreeing to an adjustment on the briefing
05: 24: 17 10 schedule, Mr. Manzo?

05: 24: 20 11 MR. MANZO: We are not opposing the briefing -- any
05: 24: 23 12 change in the briefing schedule, as long as we can hold the
05: 24: 26 13 May 9 date. We don't object to any change, as long as we can
05: 24: 33 14 hold the date of the hearing.

05: 24: 34 15 THE COURT: What's the schedule, Mr. Wood? What's
05: 24: 53 16 the briefing on the preliminary injunction?

05: 24: 55 17 MR. KARTON: Your Honor, April 4th was the date by
05: 24: 57 18 which we were supposed to, that is, the Miyanos were supposed
05: 25: 00 19 to respond, and two weeks later, I believe, the 18th was the
05: 25: 05 20 date by which MMU were supposed to reply.

05: 25: 11 21 MR. MANZO: That's correct, your Honor.

05: 25: 14 22 THE COURT: Okay. I can extend the briefing schedule
05: 25: 16 23 and have it all fully briefed for me one week beforehand,
05: 25: 20 24 so --

05: 25: 21 25 MR. KARTON: Your Honor, we were discussing this

05: 25: 22 1 earlier, if I may, and we -- we were discussing that in light
05: 25: 31 2 of all the deposition scheduling, that we might have our
05: 25: 37 3 response time extended to the 28th of April, and Mr. Manzo
05: 25: 46 4 would have until the 6th of -- or the 5th of May, but that
05: 25: 52 5 isn't a full week before the 9th.

05: 25: 55 6 THE COURT: Well, it's nice of you all to give
05: 25: 57 7 yourselves time to do your work --

05: 25: 59 8 MR. KARTON: I apologize, your Honor. We're not
05: 26: 02 9 making it statements here. We're just suggesting.

05: 26: 05 10 THE COURT: Okay. You can have -- as I just stated,
05: 26: 09 11 I need them to be filed, the reply brief, by May 2nd. So you
05: 26: 14 12 can work back in time, and May 25th -- or excuse me --
05: 26: 19 13 April 25th then would be the responses. So --

05: 26: 22 14 MR. KARTON: All right. So April 25 and then May 2?

05: 26: 24 15 THE COURT: Yes, right. So that gives me a week to
05: 26: 27 16 review. And I'll enter the order regard regarding the
05: 26: 30 17 depositions.

05: 26: 31 18 I am referring any future discovery disputes to the
05: 26: 34 19 magistrate judge, Judge Nolan, so file in front of her.

05: 26: 37 20 In the meantime, because I am on trial for the entire
05: 26: 41 21 month of April and will not be available to do your daily
05: 26: 46 22 calls to find out where the latest witness has flown to.

05: 26: 50 23 Is there anything else before I leave?

05: 26: 52 24 MR. KARTON: Yes, your Honor. There is a motion
05: 26: 54 25 before you on April 1st. It is a motion to disqualify --

05: 27: 02 1 THE COURT: I have that. We know that.

05: 27: 03 2 MR. KARTON: Oh, I --

05: 27: 04 3 THE COURT: That's from the last time you were here.

05: 27: 05 4 MR. KARTON: And that one's going to go ahead before
05: 27: 07 5 you?

05: 27: 07 6 THE COURT: That's before me.

05: 27: 08 7 MR. KARTON: There is another motion that is filed by
05: 27: 13 8 Masuda, Funai to quash the -- a subpoena that we served on a
05: 27: 20 9 member of that law firm, George Kobayashi.

05: 27: 23 10 THE COURT: And when was that filed?

05: 27: 25 11 MR. KARTON: Steven?

05: 27: 27 12 MR. KATZ: I believe that was filed yesterday or the
05: 27: 29 13 day before yesterday.

05: 27: 34 14 THE COURT: When is it on the docket?

05: 27: 36 15 THE CLERK: Motion by Nancy Sasamoto for motion --

05: 27: 41 16 MR. KATZ: I think it was filed yesterday.

05: 27: 42 17 THE COURT: For April 1st?

05: 27: 45 18 MR. KARTON: Yes, ma'am.

05: 27: 45 19 THE COURT: So you made it in time. It'll be up at
05: 27: 49 20 the same time.

05: 27: 49 21 MR. KARTON: All right.

05: 27: 49 22 THE COURT: Those will stay with me.

05: 27: 53 23 MR. MANZO: This is Edward Manzo. Might I just

05: 27: 58 24 inquire how much time you were allotting for the preliminary
05: 28: 02 25 injunction hearing?

05: 28: 03 1 THE COURT: Let's see I have the -- I have the entire
05: 28: 12 2 day blocked out, and so that means that you don't need to use
05: 28: 17 3 the entire day, but it is available if you were to bring in
05: 28: 23 4 witnesses and it takes a few hours. We've got it. It starts
05: 28: 27 5 at 10:00.

05: 28: 28 6 MR. KARTON: 10:00 o'clock.

05: 28: 29 7 MR. MANZO: You were not contemplating two days then?

05: 28: 32 8 THE COURT: No.

05: 28: 34 9 MR. MANZO: Thank you, your Honor.

05: 28: 37 10 MR. KARTON: All right. I think that's --

05: 28: 39 11 MR. MANZO: I had one last thing to raise. On behalf
05: 28: 43 12 of MMJ -- and I will put our appearance on file very
05: 28: 47 13 shortly -- but I need to get a little more time to answer the
05: 28: 50 14 cross -- the third-party complaint.

05: 28: 53 15 THE COURT: How much time?

05: 28: 57 16 MR. MANZO: I would like some time during the week of
05: 29: 01 17 the 21st would be fine.

05: 29: 04 18 MR. KARTON: We have no objection, your Honor.

05: 29: 06 19 THE COURT: That's fine. We'll make it due
05: 29: 09 20 April 23rd.

05: 29: 12 21 MR. MANZO: Thank you, your Honor.

05: 29: 12 22 THE COURT: Anything else?

05: 29: 15 23 MR. KARTON: No. And I thank you for your time, your
05: 29: 15 24 Honor.

05: 29: 20 25 THE COURT: Safe travels to all of you.

05: 29: 24

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MR. MANZO: Thank you, your Honor.

05: 29: 24

2

THE COURT: That's a long flight. I'm glad it's you

05: 29: 27

3

and not me.

05: 29: 29

4

MR. KARTON: We're doing our best to avoid that, to

05: 29: 31

5

tell you the truth.

05: 29: 32

6

THE COURT: All right. Okay.

05: 29: 34

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MR. MANZO: Thank you, your Honor.

05: 29: 35

8

THE COURT: Thank you. Bye-bye.

05: 29: 36

9

UNIDENTIFIED SPEAKER: Thanks all.

05: 29: 38

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UNIDENTIFIED SPEAKER: Bye now.

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(Concluded at 5:29 p.m.)

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C E R T I F I C A T E

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I certify that the foregoing is a correct transcript from

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the record of proceedings in the above-entitled matter.

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April M. Metzler, RPR, CRR

Date

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EXHIBIT 2

Louis Alex

From: Louis Alex [lalex@cookalex.com]
Sent: Friday, May 09, 2008 3:46 PM
To: 'Louis Alex'; 'Geoff Baker'
Cc: 'emanzo@cookalex.com'; 'Joel Bock'; 'Jason Smalley'; 'Steven Katz'; 'George Kobayashi'; 'Nancy Sasamoto'; 'Bob Karton'; 'Vernon Francissen'
Subject: RE: Witness Lists - Take 2

Geoff:

I apologize for any confusion in my prior email.

It is not our present intention to call witnesses other than those that either have been deposed or are now scheduled to be deposed, but we have yet to make a final determination.

Your agreement to date upon which we can exchange witness lists would be appreciated.

Louis

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Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd.

5/22/2008